

(e) *Failure to cooperate in an investigation.* Where the Administrator finds obstruction of or other failure to cooperate in a Wage and Hour investigation by a certificate holder which impedes the investigation, the certificate shall be denied or revoked for a period of one to three years, depending on the circumstances. For purposes of this regulation, cooperation includes providing records upon request to Wage and Hour compliance officers, identifying homeworkers of the certificate holder, and encouraging homeworkers to make themselves available in connection with an investigation.

(f) *Serious recordkeeping violations.* Upon a finding by the Administrator that a certificate holder has engaged in a serious recordkeeping violation, the certificate may be revoked for up to one year. Upon a second finding by the Administrator of a serious recordkeeping violation, a certificate shall be denied or revoked for one to three years. A serious recordkeeping violation is defined as one where, either through errors in or omissions of required information, the name and current address of homeworkers and the data which is necessary for the accurate determination of hours worked by or wages paid to homeworkers or data necessary for the computation of wages owed to homeworkers is unavailable with respect to 10 percent or more of the homeworkers.

(g) *Deliberate misstatement in an application for a certificate or in other documents.* Upon a finding by the Administrator of a deliberate misstatement of a material fact in an application for a certificate, in payroll records, or in any other information submitted to the Wage and Hour Division or maintained by the employer pursuant to these regulations, the certificate shall be denied or revoked for one to three years.

(h) *Discrimination against a homeworke*r. Upon a finding by the Administrator that a certificate holder has discharged or otherwise discriminated against a homeworker with respect to the homeworker's compensation or terms, conditions, or privileges of employment because the homeworker engaged in protected activity, the certificate shall be denied or

revoked for three years. Protected activity is defined as: (1) Any complaint of a violation of the Act to the employer, the Department or other appropriate authority, or (2) any action which furthers the enforcement of or compliance with the Act, such as giving information to a Wage and Hour compliance officer.

§ 530.206 Special circumstances.

At the discretion of the Administrator, a certificate need not be denied or revoked pursuant to §§ 530.204 or 530.205 of this subpart if the Administrator finds all of the following:

(a) The certificate holder, despite the exercise of due care, did not know and did not have reason to know of the violations;

(b) All back wages and civil money penalties found by the Administrator to be owing by the certificate holder have been paid; and

(c) The certificate holder has taken appropriate steps to prevent recurrence of the violations.

Subpart D—Civil Money Penalties

SOURCE: 53 FR 45724, Nov. 10, 1988, unless otherwise noted.

§ 530.301 General.

A system of civil money penalties is established to provide a remedy for any violation of the FLSA related to homework (except child labor violations, which are subject to civil money penalties pursuant to part 579 of this chapter), or for any violation of the homeworker regulations or employers' assurances pursuant to this part, which are not so serious as to warrant denial or revocation of a certificate. Accordingly, no civil money penalty will be assessed for conduct which serves as the basis of proposed denial or revocation of a certificate. (See subpart C of this part.) Civil money penalties will be assessed only against employers who are operating under a certificate or who are seeking certification.

§ 530.302 Amounts of civil money penalties.

(a) A civil money penalty, not to exceed \$500 per affected homeworker for any one violation, may be assessed for

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any violation of the Act or of this part or of the assurances given in connection with the issuance of a certificate.

(b) The amount of civil money penalties shall be determined per affected homeworker within the limits set forth in the following schedule, except that no penalty shall be assessed in the case of violations which are deemed to be *de minimis* in nature:

Nature of violation	Penalty per affected homeworker		
	Minor	Substantial	Repeated, intentional or knowing
Recordkeeping	\$10-100	\$100-200	\$200-500
Monetary violations	10-100	100-200
Employment of homeworkers without a certificate	100-200	200-500
Other violations of statutes, regulations or employer assurances	10-100	100-200	200-500

§ 530.303 Considerations in determining amounts.

(a) In determining the amount of a penalty within any range, the Administrator shall take into account the presence or absence of circumstances such as the following:

- (1) Good faith attempts to comply with the Act or regulations;
- (2) Extent to which the violation is under the employer's control;
- (3) Non-culpable ignorance of the requirements of the Act or regulations;
- (4) False documents or representations; and
- (5) Exercise of due care.

(b) An employer's financial inability to meet obligations under the Act shall not constitute a mitigating or extenuating circumstance.

(c) No civil money penalty shall be assessed against an employer, who applies for a certificate, solely for employing homeworkers, provided the employer is not currently under investigation by the Wage and Hour Division.

§ 530.304 Procedures for assessment.

Assessment of penalties pursuant to this section, including administrative proceedings, shall be in accordance with the procedures set out in subpart E of this part.

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Subpart E—Administrative Procedures

SOURCE: 53 FR 45725, Nov. 10, 1988, unless otherwise noted.

§ 530.401 Applicability of procedures and rules.

The procedures and rules contained herein prescribe the administrative process which will be applied with respect to a determination to deny (including refusal to renew) or revoke a certificate and to a determination to assess civil money penalties. Special rules and procedures for the emergency revocation of certificates are prescribed in § 530.412 of this subpart.

§ 530.402 Notice of determination.

Whenever the Administrator determines to deny or revoke a certificate or determines to assess a civil money penalty, the person affected by such determination shall be notified of the determination in writing, by certified mail to the last known address. The notice required shall:

(a) Set forth the determination of the Administrator, including the specific statutory or regulatory provision or assurance violated, the reasons for denying or revoking a certificate, or the amount of any civil money penalty assessment and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 530.403 of this subpart.

(d) Inform any affected person or persons that in lieu of formal proceedings there is available an alternative summary proceeding under § 530.412 of this subpart.

(e) Inform any affected persons that in the absence of a timely request for a hearing the determination of the Administrator shall become final and unappealable.

§ 530.403 Request for hearing.

(a) Except in the case of an emergency revocation under § 530.411 of this subpart, a request for an administrative hearing on a determination referred to in § 530.402 of this subpart